



## LINCOLN COUNTY PLANNING DEPARTMENT

418 MINERAL AVE | LIBBY, MT. 59923 | P: (406) 283.2460 | F: (406) 293-5640

WEBSITE: [HTTP://WWW.LINCOLNCOUNTYMT.US/PLANNING](http://www.lincolncountymt.us/planning)

### LAKESHORE CONSTRUCTION PERMIT NO. 2016-06-30-MTL

Body of Water: Middle Thompson Lake

Applicant: Jon Maxwell (MT FWP)  
PO Box 20071  
Helena, MT. 59620

Submitted: 4/22/16

Planning Board Meeting: via email

Governing Body Decision: 6/29/16

Review Period Expires 7/21/16

Owner Name: Same

Contractor Name: Robert Smith A to Z Engineering

Legal Description: SE, SW, S 3, T26N. R27W | 56-3697-03-3-01-01-0000 | Logan State Park

Physical Address: 77518 US Highway 2, Libby, MT. 59923

TYPE OF PROJECT: Improve Dock Access pathway, Remove Existing Dock & Install new floating dock w/Anchors

**PRELIMINARY APPROVAL DATE** 06/29/16

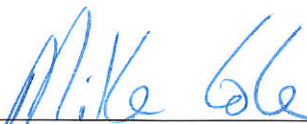
**EXPIRATION DATE** 06/29/17

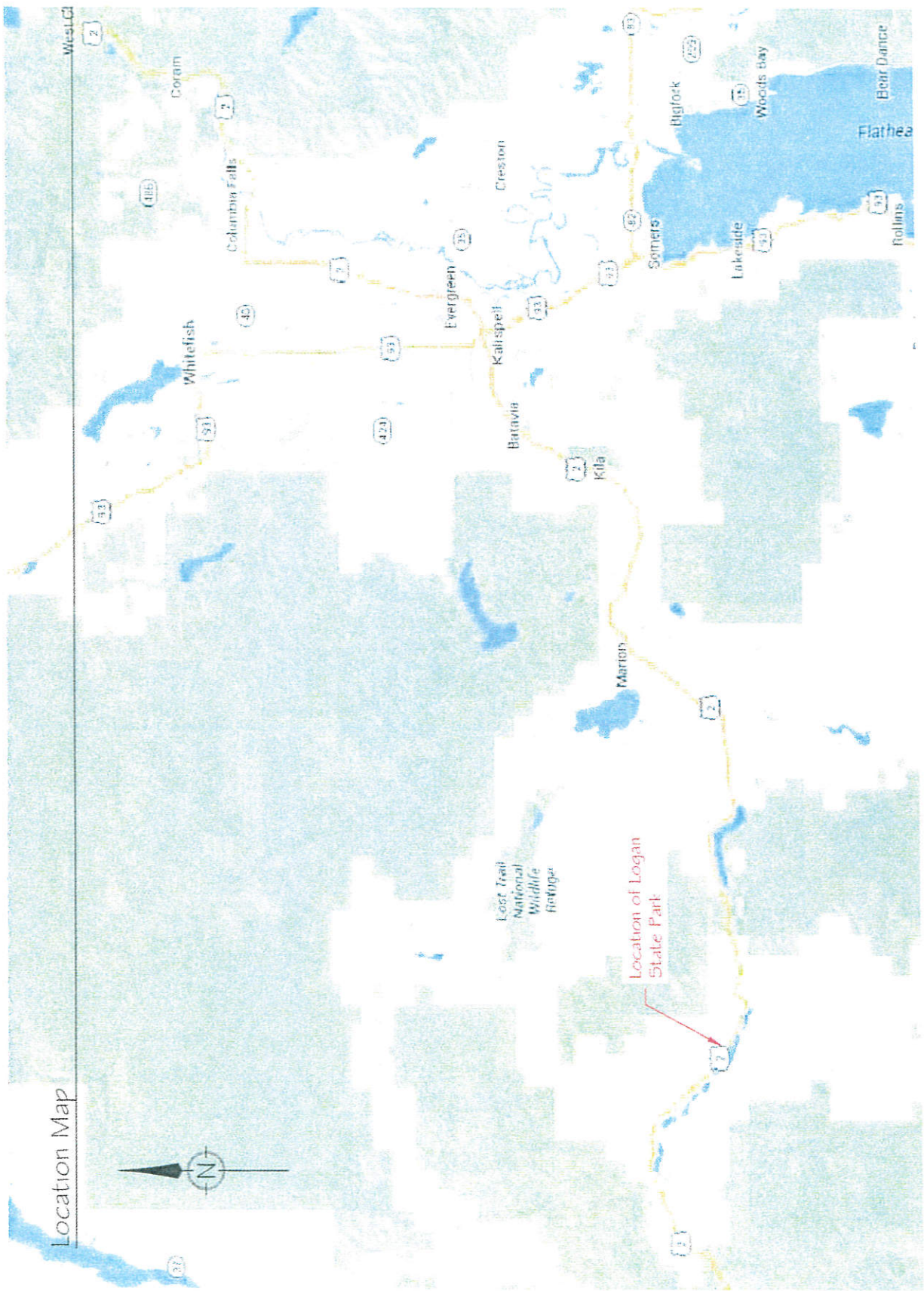
#### **This permit is hereby subject to the following conditions of approval:**

1. Complete per the designs provided by A to Z Engineering; any deviation from such design shall result in a violation of the Lincoln County Lakeshore Protection Regulations and could be subject to enforcement and fines;
2. Any excavating material from the trench of the addition of installing electrical services to the campsites shall be either used to backfill the trench or removed from the site completely.
3. The applicant agrees to avoid, repair, or mitigate any damage caused to live riparian vegetation or soil stability as a result of the construction of the project;
4. The applicant agrees to adhere to other local, state, and federal regulations and permit requirements;
5. Sign and Return the Letter of Completion, along with photos, within fifteen (15) days of completion of the Lakeshore Project for Final Review and Approval by the Lincoln County Planning Department.

#### **PRELIMINARY APPROVAL FOR LAKESHORE CONSTRUCTION:**

Approved this 29 day of June 2016

  
\_\_\_\_\_  
Lincoln County Board of Commissioners, Chairperson







A2Z Engineering, PLLC • 138 East Center Street, Suite A • Kalispell, MT 59901  
Phone: (406) 755-7888 • Fax: (406) 755-7880 • [www.a2z-engineering.com](http://www.a2z-engineering.com)



View of Existing Dock from Lawn Area





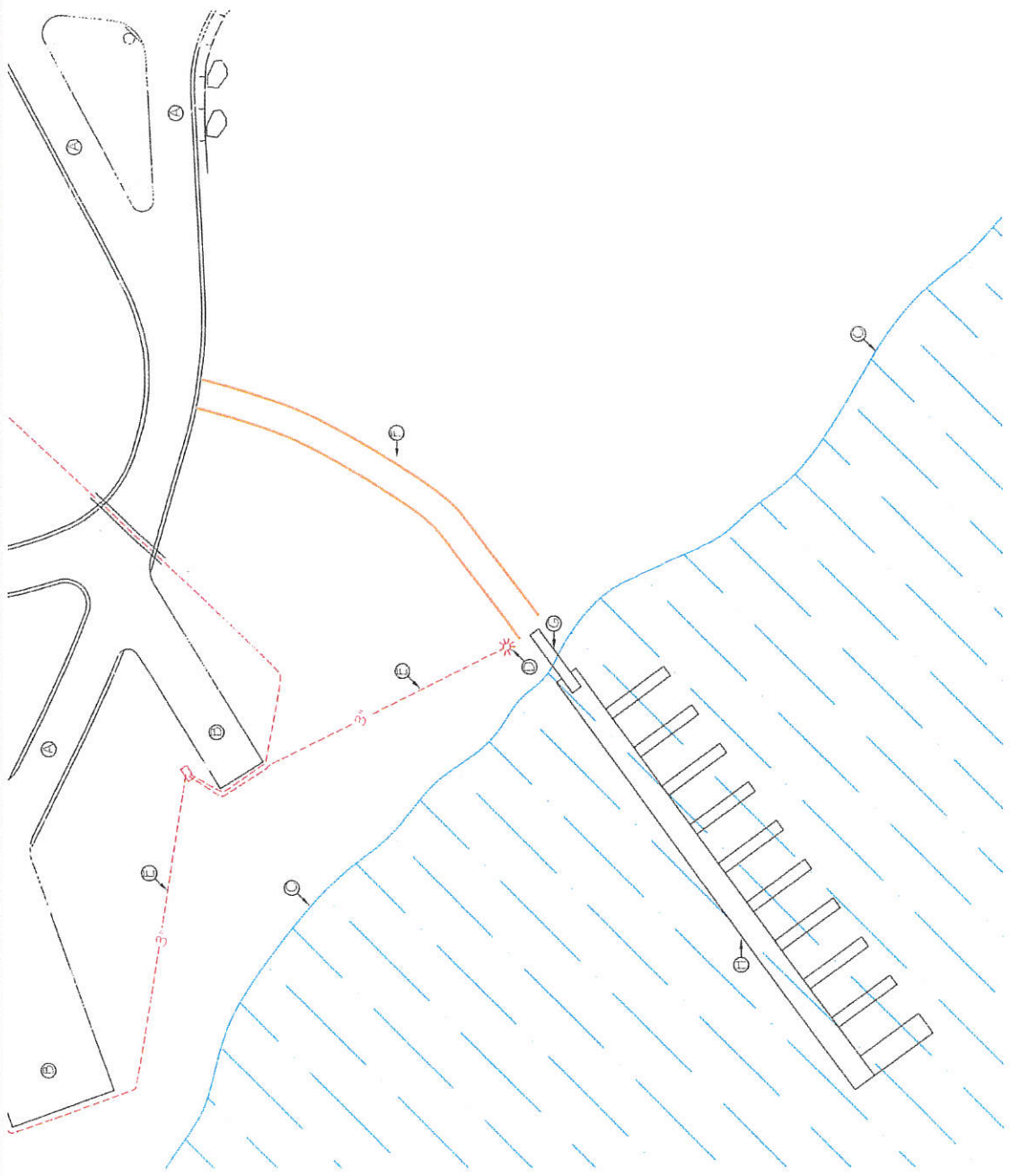
View of Existing Dock From Shoreline



Keyed Notes for Siteplan:

A.	Typical proposed 50 amp pedestals
B.	Typical proposed buried electrical conduit
C.	Proposed stabilized pathway
D.	Proposed bollard lighting
E.	Proposed floating dock
F.	Replacement transformer





Keyed Notes for Siteplan:

- A. Existing Asphalt Campground Roadway
- B. Existing Campsite Pad
- C. Existing Shoreline
- D. Proposed Bollard Lighting
- E. Proposed Electrical Conduit
- F. Proposed pathway
- G. Proposed 20 ft aluminum gangway
- H. Proposed floating dock

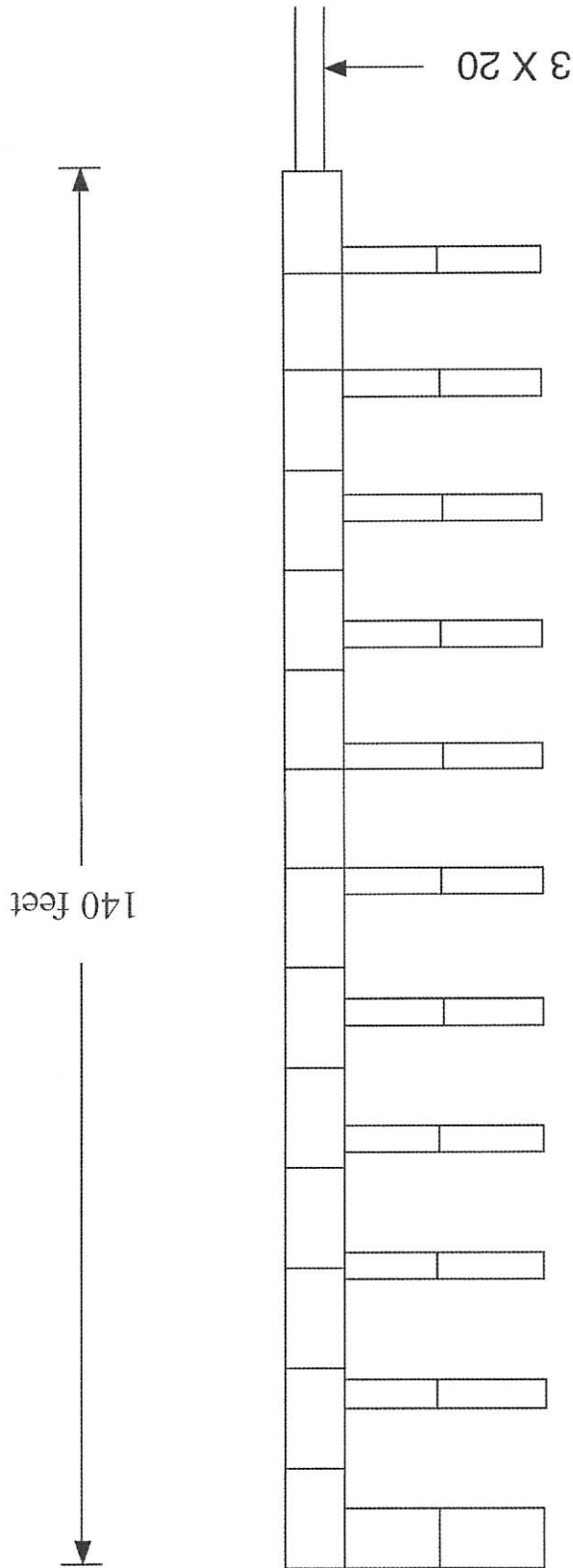


SHEET: 7 of 12

**Montana Fish, Wildlife & Parks** Dock & Pathway Siteplan  
Logan State Park Electrification and Dock Project



DESIGNED BY: J. Smith	DATE: April 11, 2016	REVIEWED BY:	DATE:	APPROVED BY:	DATE:
CHECKED BY: J. Thomas	DATE: April 15, 2016	APPROVED BY:	DATE:	APPROVED BY:	DATE:



Not to Scale

SHEET: 9 of 12

**Montana Fish, Wildlife & Parks** Dock Details  
Logan State Park Electrification and Dock Project

DESIGNED BY: J. Smith	DATE: April 15, 2016	APPROVED BY: [Signature]	DATE: [Blank]
CHECKED BY: J. Thompson	DATE: April 15, 2016	APPROVED BY: [Signature]	DATE: [Blank]



April 19, 2016

Jon Maxwell  
Montana Fish Wildlife and Parks  
P.O. Box 200701  
1522 9<sup>th</sup> Avenue  
Helena, MT 59620

RECEIVED

APR 22 2016

DESIGN & CONSTRUCTION  
DEPT. OF FISH, WILDLIFE & PARKS

RE: Authorization No. **MTB008316** Short Term Water Quality Standard for Turbidity Related to Construction Activity Pursuant to 75-5-318, MCA  
VALID April 19, 2016 through April 19, 2017

Dear Mr. Maxwell:

The Montana Department of Environmental Quality Water Protection Bureau has completed our review of your application for the Middle Thompson Lake dock installation, in Section 3, Township 26 North, Range 27 West, Lincoln County, Montana. This activity herewith is qualified for a temporary surface water quality turbidity standard if it is carried out in accordance with the following conditions:

- (1) Construction activities in or near the watercourse are to be limited to the minimum area necessary, and conducted so as to minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation,
- (2) The use of machinery in the watercourse shall be avoided unless absolutely necessary. To prevent leaks of petroleum products into waterways, no defective equipment shall be operated in the watercourse or adjacent areas capable of contributing surface flow to the watercourse,
- (3) Precautions shall be taken to prevent spillage of any petroleum products, chemicals or other deleterious material in or near the watercourse, and no equipment shall be fueled or serviced in adjacent areas capable of contributing surface flow to the watercourse,
- (4) All disturbed areas on the streambank and adjacent areas created by the construction activity shall be protected with temporary erosion control during construction activities. These areas shall be reclaimed with appropriate erosion control measures and revegetated to provide long-term erosion control,
- (5) Any excess material generated from this project must be disposed of above the ordinary high water mark, not classified as a wetland, and in a position not to cause pollution to State waters,



Middle Thompson Lake Dock Installation  
April 19, 2016  
Page 2 of 2

- (6) Clearing of vegetation will be limited to that which is absolutely necessary for construction of the project,
- (7) The use of asphalt or petroleum-based products as riprap is strictly prohibited. Its use as fill material is also prohibited if it is placed in a location where it is likely to cause pollution of State waters,
- (8) This authorization does not authorize a point source surface water discharge. A MPDES permit is required for said discharge, and
- (9) The applicant must conduct all activities in full and complete compliance with all terms and conditions of any permit for this activity issued pursuant to the Montana Natural Streambed and Land Preservation Act (310 permit) or the Montana Stream Protection Act (124 permit), and any valid Memorandum of Agreement and Authorization (MAA) negotiated for this activity.

This authorization is valid for the period noted. No authorization is valid for more than a one-year period of time.

Any violations of the conditions of this authorization may be subject to an enforcement action pursuant to the applicable provisions of the Montana Water Quality Act.

This authorization is granted pursuant to 75-5-318, MCA, and only applies to the activity described by your application. Any modification of the activity described in your application which may result in additional turbidity in the stream must receive prior approval from the Department. You may contact me at (406) 444-3080.

Sincerely,



Jon Kenning, Chief  
Water Protection Bureau  
Permitting & Compliance Division

cc: Lincoln Conservation District

**Rob Smith**

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**From:** Green, Nathan J NWO [Nathan.J.Green@usace.army.mil]  
**Sent:** Friday, May 06, 2016 3:16 PM  
**To:** jomaxwell@mt.gov  
**Cc:** Rob Smith  
**Subject:** Middle Thompson Lake Boat Dock NWO-2016-00846-MTM  
**Attachments:** signed nwp verify.pdf; NWO-2016-00846 PJD Form.pdf; NWP 18 Fact Sheet.pdf; MTDEQ-2012NWP-401cert.pdf

Here is the permit verification and attachments. A signed hard copy will be mailed to the applicant. Please let me know if you have any questions.

Sincerely,

Nathan Green  
Senior Project Manager  
U.S. Army Corps of Engineers, Omaha District Missoula Regulatory Office  
1600 North Avenue West, Suite 105  
Missoula, Montana 59801-5500  
(406) 541-4845 x322





REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
CORPS OF ENGINEERS, OMAHA DISTRICT  
HELENA REGULATORY OFFICE  
10 WEST 15<sup>TH</sup> STREET, SUITE 2200  
HELENA, MONTANA 59626

May 6, 2016

Regulatory Branch  
Montana State Program  
Corps No. **NWO-2016-00846-MTM**

Subject: MT FWP (A2Z Engineering) - New Floating Dock - Middle Thompson Lake (Lincoln County)

Mr. Jon Maxwell  
Montana Fish, Wildlife and Parks  
Post Office Box 200701  
Helena, Montana 59620

Dear Mr. Maxwell:

We are responding to your request for Nationwide Permit (NWP) verification for the above-mentioned project. The project is located at Middle Thompson Lake, in Logan State Park, within Section 3, Township 26 N, Range 27 W, Principal Meridian, Latitude 48.03264°, Longitude -115.06833°, Lincoln County, Montana.

Specifically, you requested authorization for the following work in waters of the U.S.:

Work Item	Description
a.	Remove existing dock and then install anchoring for new floating dock, using four 0.2 cubic yard (700 pound) concrete blocks and six 2-inch diameter hand augured galvanized steel piers.

Based on the information you provided, the proposed activity, affecting approximately 20 square feet of lakebed, is authorized by NWP 18 Minor Discharges, found in the February 21, 2012 Federal Register (76 FR 9174), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this NWP and lists the General and Regional Conditions that must be adhered to for this authorization to remain valid. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

You are responsible for ensuring that all work is performed in accordance with the terms and conditions of the NWP. If a contractor or other authorized representative will be conducting work on your behalf it is strongly recommended that they be provided a copy of this letter and the enclosed conditions. Failure to comply with the General and Regional Conditions of this NWP, or the project-specific special conditions of this authorization, may result in the suspension or revocation of your authorization and may be subject to appropriate enforcement action.

The U.S. Army Corps of Engineers (Corps) prepared the enclosed preliminary jurisdictional determination (JD) for the project area. A preliminary JD is a written indication that waterways and wetlands within your project area may be waters of the U.S. These waters are treated as jurisdictional waters of the U.S. for the purposes of determining project impacts and

compensatory mitigation requirements. Preliminary JDs may not be appealed. If you believe the preliminary JD is inaccurate, you may request this office complete an approved JD prior to your commencement of any work in a water of the U.S. An approved JD is an appealable official determination regarding the presence or absence of waters of the U.S. Completion of an approved JD may require coordination with the U.S. Environmental Protection Agency (EPA). If you believe the preliminary JD is accurate and do not want the Corps to complete an approved JD, please sign the preliminary JD and return it to the letterhead address within two weeks.

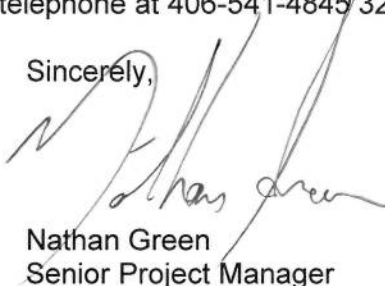
The Montana Department of Environmental Quality has provided the enclosed CWA Section 401 water quality certification for this NWP which includes General Conditions, all of which must be complied with for that certification to remain valid. This does not eliminate the need to obtain other permits that may be required by that agency.

This verification is valid until March 18, 2017, when the existing NWPs are scheduled to be modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified, reissued or revoked, you will have twelve (12) months from the date of the modification, reissuance or revocation of the NWP to complete the activity under the present terms and conditions unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5 (c) or (d). Activities completed under the authorization of an NWP which was in effect at the time the activity was completed continue to be authorized by that NWP.

The Omaha District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at: [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey). If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

Please refer to identification number **NWO-2016-00846-MTM** in any correspondence concerning this project. If you have any questions, please contact Nathan Green at the Missoula Regulatory Office, 1600 North Avenue West, Suite 105, Missoula, Montana 59801, by email at [Nathan.J.Green@usace.army.mil](mailto:Nathan.J.Green@usace.army.mil), or telephone at 406-541-4845/322.

Sincerely,



Nathan Green  
Senior Project Manager

Enclosures:  
Compliance Certification  
Preliminary Jurisdictional Determination



NWP 18 Minor Discharges. Fact Sheet with Regional Conditions  
Montana DEQ CWA Section 401 Water Quality Certification

cc (via email):

Robert Smith, A2Z Engineering (rsmith@a2z-engineering.com)

## COMPLIANCE CERTIFICATION

**Corps File Number:** NWO-2016-00846-MTM

**Name of Permittee:** Jon Maxwell

**County:** Lincoln County, Montana

**Date of Issuance:** May 6, 2016

**Corps Project Manager:** Nathan Green

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US Army Corps of Engineers  
Omaha District  
Missoula Regulatory Office  
1600 North Ave West, Suite 105  
Missoula, Montana 59801

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the conditions of this permit, you are subject to permit suspension, modification, or revocation.

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I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date



# PRELIMINARY JURISDICTIONAL DETERMINATION FORM

## U.S. Army Corps of Engineers

### **BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):** May 3, 2016

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**

Jon Maxwell  
Montana Fish, Wildlife and Parks  
PO Box 200701  
1522 9th Avenue  
Helena, MT 59620  
jomaxwell@mt.gov

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** OMAHA DISTRICT, MT FWP  
(A2Z Engineering) - New Floating Dock - Middle Thompson Lake (Lincoln County),  
NWO-2016-00846-MTM

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:**

*(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)*

**State:** MT

**County:** Lincoln

Center coordinates of site:

**Latitude:** 48.03264

**Longitude:** -115.068333333333

**Universal Transverse Mercator:** 643999.88 E, 5321733.07 N, 11 N

**Name of nearest waterbody:** Middle Thompson Lake

Identify (estimate) amount of waters in the review area: 0.25 acre

Non-wetland waters: 0.25 acre

Cowardin Class: Lacustrine

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal: N/A

Non-Tidal: N/A

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

☒ Office (Desk) Determination.

Date: May 5, 2016

☐ Field Determination.

Date(s):

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring “pre-construction notification” (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. §331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there “*may be*” waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

**SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply)  
- checked items should be included in case file and, where checked and requested,  
appropriately reference sources below):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☐ U.S. Geological Survey Hydrologic Atlas:
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: MT-THOMPSON LAKES
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ National wetlands inventory map(s). Cite name:
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is:  
(National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): From ORM GIS
- ☐ or ☒ Other (Name & Date): Ground photos supplied by applicant
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

**IMPORTANT NOTE: The information recorded on this form has not necessarily been  
verified by the Corps and should not be relied upon for later jurisdictional determinations.**

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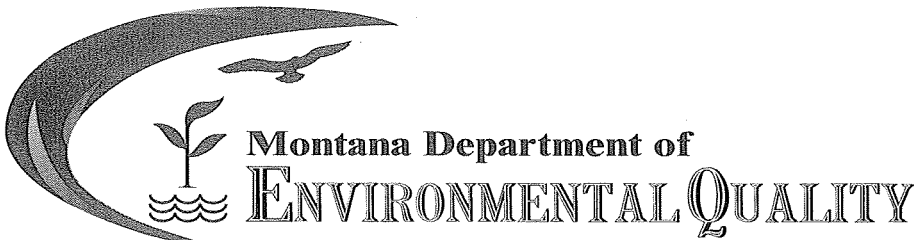
Signature and date of Regulatory Project  
Manager (REQUIRED)

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Signature and date of  
person requesting preliminary JD  
(REQUIRED, unless obtaining  
the signature is impracticable)

Site Number	Latitude/ Northing	Longitude/ Easting	Cowardin Class/ Stream Flow	Estimated Amount of Aquatic Resource in Review Area	Class of Aquatic Resource
1	48.0326388888 889	- 115.068333333 33	Lacustrine Fringe	.25 Acres	Lacustrine





Brian Schweitzer, Governor  
Richard H. Opper, Director

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • [www.deq.mt.gov](http://www.deq.mt.gov)

April 20, 2012

Todd N Tillinger  
Corps of Engineers, Helena Regulatory Office  
10 West 15<sup>th</sup> Street, Suite 2200  
Helena, Mt. 59626

Subject: Montana Department of Environmental Quality 401 Water Quality Certification  
(COE-2010-0035. ZRIN 0710-ZA05 – 2012 Nationwide Permit Reissuance – Federal  
Register 76 FR 9174)

Dear Todd:

The attachment to this letter (Parts A - D) constitutes the Montana Department of Environmental Quality's (DEQ) final Section 401 Water Quality Certification position on the subject Nationwide Permits. It should not result in an undue burden to either of our agencies, while still providing adequate water quality protection. Also, please find enclosed the Montana Department of Environmental Quality's December 5, 2000, guidelines for materials for stream bank stabilization as referenced in the attached certification.

We look forward to continuing the close cooperation and coordination efforts our agencies have fostered over recent years. Please do not hesitate to contact me if you have any questions 444-4969 – [jchambers@mt.gov](mailto:jchambers@mt.gov) or Jeff Ryan 444-4626 – [jeryan@mt.gov](mailto:jeryan@mt.gov).

Sincerely,

Jenny Chambers, Chief  
Water Protection Bureau

cc: Toney Ott, EPA w/ Attachments  
Julie Dalsoglio, EPA w/ Attachments



April 20, 2012

**Water Quality Certification In Accordance With Section 401 of the Clean Water Act For  
The 2012 Nationwide Permits in Montana**

**A. Certification**

DEQ is granting Section 401 Water Quality Certification (certification) for Nationwide Permits 1, 2, 4-11, 15-22, 24-25, 28-36, 38-44 and 46-50 with the general conditions in part D. below.

**B. Special Conditions for Specific Nationwide Permits**

- 1) DEQ is granting certification for Nationwide Permits #3, #14, and #23 with the general conditions in part D. below and the following condition: DEQ Water Protection Bureau – Discharge Permitting Program must be notified by the permittee within 48 hours of commencement of the regulated activity. Notification must be sent to [WPBPublicNotices@mt.gov](mailto:WPBPublicNotices@mt.gov) or fax (406) 444-1374 Attention Water Protection Bureau. Notification shall include at minimum (a) the permittee name, (b) the project name, (c) the Nationwide Permit used and Army Corp. of Engineers file number for the project, (d) the Township, Range and Section, and (e) the project or regulated activity location in decimal latitude and longitude to the millionth degree (six significant figures to the right of the decimal point).
- 2) DEQ is granting certification of Nationwide Permit #12 (utility line activities) with the general conditions in part D. below for projects where a static or vibratory plow is used. For all other projects that qualify under this Nationwide Permit, DEQ denies certification.
- 3) DEQ is granting certification of Nationwide Permit #13 (bank stabilization), Nationwide Permit #37 (emergency watershed protection and rehabilitation), and Nationwide Permit #45 (repair of uplands damaged by discrete events) with the general conditions in part D. below for all projects equal to or less than 300 feet in length.

**C. Denial**

DEQ denies certification for Nationwide Permit #27 (stream and wetland restoration), Nationwide Permit #51 (land based renewable energy generation facilities), and Nationwide Permit #52 (water based energy renewable energy generation facilities).

#### **D. General Conditions for Nationwide Permits**

The following general conditions apply to all certified Nationwide Permits as provided in A and B above.

- 1) This certification does not authorize the placement or construction of septic/leach/stormwater systems or other sewage treatment facilities in wetlands.
- 2) This certification does not authorize construction of dams, except for aquatic restoration projects and temporary dams associated with construction activity.
- 3) This certification requires that materials used in stream bank or shore stabilization projects adhere to the Montana Department of Environmental Quality's December 5, 2000 guidelines for materials for stream bank stabilization (also attached). Tires may not be used to stabilize any banks or shores in state waters.
- 4) This certification requires that all equipment be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. Equipment cannot continue operating in or near the water if a leak is discovered. All such leaks will be properly repaired prior to equipment being allowed on the project. Leaks that occur after the equipment is moved to the project site will be fixed that same day or the next day or be removed from the project area. If equipment is to be operated in or near water, a spill containment kit shall be available at the project site.
- 5) This certification requires that all permittees shall, to the maximum extent practicable, incorporate and construct design features that eliminate bridge deck run-off containing sediment, salt, or other pollutants from discharging directly into state water. To the extent practicable, bridge deck discharge, should be directed to a detention basin of unspecified size prior to discharge into state waters.
- 6) This certification requires that riprap projects, to the extent practicable, avoid the use of geotextile fabric as riprap underlayment. To the extent practicable, riprap voids shall incorporate approximately 30-50% fines/soil and viable plant material and/or root-stock. (A technique specification example is available upon request).

## **Policy on Streambank Stabilization**

This policy outlines the guidelines for approved materials to be used for streambank stabilization in Montana. This policy and a draft Environment Assessment were provided to the public for comment via public notice MT-00-10 issued September 18, 2000. Comments were accepted until October 17, 2000. The draft Environmental Assessment is adopted as the final Environmental Assessment with the Responses to Comments incorporated.

Signed into policy 12/05/00 by Bonnie Lovelace, Chief, Water Protection Bureau and 12/06/00 by Jan Sensibaugh, Administrator, Permitting & Compliance Division.

For answers to questions or copies of the Response to Comments by mail or e-mail, contact Marilyn Pelo, Water Protection Bureau, at (406) 444-0574 or [mpelo@state.mt.us](mailto:mpelo@state.mt.us).

### **GUIDELINES FOR MATERIALS FOR STREAMBANK STABILIZATION**

The following guidelines represent the efforts of a work group composed of Conservation District representatives, natural resource consultants, environmental interests, and state and federal regulatory agencies. They are suggested by the Montana Department of Environmental Quality and not necessarily endorsed by all the work group members. These guidelines are only for use in areas where the use of high-density, angular rock is not practicable. (The term "practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes [40 CFR 230.3(q)]). Sandstone or broken concrete may be acceptable alternatives to high-density, angular rock in certain situations, although local regulation may prohibit their use. The use of any river training device/structure may directly or cumulatively alter the ecology of Montana rivers and streams. Cumulative impact considerations may preclude the use of any river training device.

Bank stabilization projects are sometimes authorized under the following jurisdictions: Local Conservation District – Natural Streambed & Land Conservation Act (310); Montana Department of Fish Wildlife and Parks – Stream Protection Act (SPA124); County Floodplain Administrator – Floodplain Permit; U.S. Army Corps of Engineers – Section 404/10 Permit; Montana Department of Environmental Quality – 75-5-318, MCA Authorization; Montana Department of Natural Resources and Conservation – Navigable Rivers Land Use License/Easement.

The following optional design concepts should be considered in conjunction with the guidelines to minimize environmental/aesthetic concerns:

- Utilize rock only in the lower\* portion or toe of the riprap with woody structures/features, biodegradable fabric, etc. in the upper\* portions.  
\* The elevation at which the mean annual flow occurs is the division between "upper" and "lower."
- Incorporate soil in the upper portions of the project with appropriate woody (usually willow) plantings as near average water elevations as possible and herbaceous plantings elsewhere.
- Provide a temporary or permanent buffer strip (streamside area where protection promotes growth and sustenance of woody vegetation) along the project length to provide for vegetation stability where grazing or recreational use may impact plant growth.
- Preferably, plantings should be on slopes of 3:1 or flatter and irrigated, if possible.

( Note: Numerous documents with more detailed information are available. Contact the Natural Resource Conservation Service or the Department of Natural Resources and Conservation for their "Stream Project Manual.")



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## COMPLIANCE CERTIFICATION

Project: (Please attach copy of the completed "Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies.")

Upon completion of project activity, sign this certificate and return it to the following address:

Montana Department of Environmental Quality  
Permitting & Compliance Division/Water Protection Bureau  
Box 200901  
Helena, MT 59620-0901

Please answer the following questions:

1. What is the source of the concrete rubble?
2. What is the type of concrete rubble (curb/gutter, foundation, etc.)?
3. What was the cost of the rubble?  
(The recipient of the rubble cannot be compensated for accepting the rubble without a landfill license.)

I hereby certify that the project work performed is in compliance with all applicable permits and in compliance with the "Guidelines for Materials for Streambank Stabilization."

\_\_\_\_\_  
Signature of Project Owner

\_\_\_\_\_  
Date

I hereby certify that I provided the concrete rubble used in the project and that I did not compensate the owner for accepting the rubble.

\_\_\_\_\_  
Signature of Concrete Rubble Provider

\_\_\_\_\_  
Date

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## **Nationwide Permit 18**

### **Minor Discharges**

Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- (b) The discharge will not cause the loss of more than 1/10-acre of waters of the United States; and
- (c) The discharge is not placed for the purpose of a stream diversion.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands.

(Sections 10 and 404)

### **Nationwide Permit General Conditions**

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

- 1. Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.  
(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.  
(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

**3. Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**6. Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

**7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**8. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

**10. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**15. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**16. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**17. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**18. Endangered Species.** (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such

designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.

**20. Historic Properties.** (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or



Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**21. Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

**22. Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**23. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties

responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

**24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

**25. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement

of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

**31. Pre-Construction Notification.** (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 45 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 45 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;
- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
- (4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the



delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

#### **Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

**2012 Nationwide Permits  
Regional Conditions  
Omaha District  
State of Montana**

The following Nationwide Permit regional conditions will be used in the State of Montana. Regional conditions are placed on Nationwide Permits to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns.

**Wetlands Classified as Peatlands – Revoked for Use**

All Nationwide Permits, with the exception of 3, 5, 6, 20, 27, 32, and 38, are revoked for use in peatlands in Montana.

“Peatlands” are waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12 inches) or more thick. Any type of peat-covered terrain, including fens, bogs, and muskegs, are all peatlands

**Wetlands Classified as Peatlands – Pre-construction Notification Requirement**

For Nationwide Permits 3, 5, 6, 20, 27, 32, and 38 permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity impacting peatlands in Montana.

**Waters Adjacent to Natural Springs – Pre-construction Notification Requirement**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in Montana.

For purposes of this condition, a spring is defined as any location where there is groundwater flow emanating from a distinct point. Springs do not include seeps or other groundwater discharge areas where there is no distinct point source.

**Riffle and Pool Complexes – Pre-construction Notification Requirement**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity involving the discharge of dredge or fill material into riffle and pool complexes.

Riffle and pool complexes are special aquatic sites and sometimes characterize steep gradient sections of streams. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas adjacent to riffles and are characterized by slower stream velocities, a smooth water surface, and finer substrate material.

**Scrub-Shrub and Forested Wetlands – Pre-construction Notification Requirement**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity involving the discharge of dredge or fill material into scrub-shrub and/or forested wetlands.

Forested wetlands are characterized by woody vegetation that is 20 feet tall or taller and normally possess an overstory of trees and an understory of young trees or shrubs and an herbaceous layer. Scrub-shrub wetlands include areas dominated by wood vegetation that is less than 20 feet tall including true shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

**Yellowstone River (including the Special River Management Zone) – Pre-construction Notification Requirement**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities within the Yellowstone River and impoundments.

**Milk River, Missouri River, Bitterroot River, Clark Fork River (tributary to the Columbia River), the Flathead River above Flathead Lake, and Flathead Lake – Pre-construction Notification Requirement**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities in these waterways and their impoundments.

**Indian Reservations in Montana – Pre-construction Notification Requirement**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities within the boundaries of any Indian Reservation in Montana.

**Channel Straightening and Relocation Activities – Pre-construction Notification Requirement**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to straightening, relocating and/or shortening an existing perennial stream channel. For all nationwide permits, except NWP 27, the total channel length reduction for all ephemeral, intermittent or perennial channels must be less than 100 feet. This requirement may be waived by the Corps for impacts to man-made ditches, canals or conveyances on a case-specific basis.

**Bank and Shoreline Stabilization Activities (except activities located in the Special River Management Zone of the upper Yellowstone River) – Pre-construction Notification Requirement**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any non-bioengineered bank stabilization activity involving all new bank or shoreline stabilization, including activities extending the length of previously stabilized areas. The following additional requirements apply to all bank and shoreline stabilization for all Nationwide Permits:

For bank revetments such as riprap, root wads, rock or log toes, or any bioengineered revetment, a. through c. apply:

- a. The revetment must conform to the existing bankline.
- b. The revetment must not extend above the elevation of the existing top of the bank (i.e., no new levees).
- c. The revetment must not wholly or partially block flows from entering a side channel or an overflow channel.

For bank stabilization structures that project into the stream, such as weirs, barbs or vanes, d. through i. apply:

- d. The bank-end of the structure can be no higher than the ordinary high water mark.

- e. The top of the structure must decrease in elevation as it extends away from the bank.
- f. The structure must angle upstream from the bank.
- g. The structure must be keyed into the bed and the bank.
- h. The structure must not wholly or partially block flows from entering a side channel or an overflow channel.
- i. The structure cannot extend out more than 25% of the bankfull channel width from the existing bank.

For the purposes of this condition, bioengineering is defined as bank stabilization methods utilizing predominantly live and/or dead vegetation. Bioengineering can sometimes include minor amounts of soil, rock, and/or large dead wood.

**Special River Management Zone of the Upper Yellowstone River – Bank Stabilization Activities - All Nationwide Permits**

For bank stabilization activities associated with any Nationwide Permit, including maintenance of bank stabilization, the following apply:

For bank revetments such as riprap, root wads or any bioengineered revetment, a. through e. apply:

- a. Revetments must conform to the existing eroded or eroding bankline, unless such work is determined by the Corps to be biologically or geomorphically beneficial for the upper Yellowstone River.
- b. Revetment slopes must be flatter than the angle of repose for the selected revetment material. For example, rock riprap normally needs to be placed on a slope flatter than 1.5H:1V (1.5 Horizontal to 1 Vertical).
- c. Revetments are only permissible under Nationwide Permits if they are parallel to and near the lateral boundaries of the Special River Management Zone.
- d. Revetments must not extend above the elevation of the adjacent natural bank height (i.e., no new levees).
- e. Revetments must not wholly or partially block flows from entering a side channel, secondary channel, or an overflow channel, unless such work is determined by the Corps to be necessary for maintaining or restoring the geomorphic integrity of the upper Yellowstone River.

For bank stabilization structures that project into the stream, such as weirs, barbs, hard points, or vanes, f. through k. apply:

- f. Bank stabilization structures must not wholly or partially block flows from entering a side channel, secondary channel, or an overflow channel, unless such work is determined by the Corps to be necessary for maintaining or restoring the geomorphic integrity of the upper Yellowstone River.
- g. Bank stabilization structures are only permissible under Nationwide Permits if they result in an effective bankline that is approximately parallel to and near the lateral boundaries of the Channel Migration Zone.
- h. Bank stabilization structures must be keyed into the bank far enough to prevent flanking.
- i. Bank stabilization structures cannot occupy more than 10% of the bankfull channel area. Bankfull channel area pertains to the specific primary or secondary channel in question, and is not the aggregate channel area of all primary and secondary channels in multi-channel reaches.
- j. Bank stabilization structures must not present hazardous obstructions to boating, floating, or other river uses.
- k. Bank stabilization structures that are low in elevation, project only a short distance out from the bank, and angle upstream are more likely to qualify for Nationwide Permits because they typically result in less adverse impact on aquatic resources than structures that are tall, long, and point downstream.

**Special River Management Zone of the Upper Yellowstone River - Sediment Management – All Nationwide Permits**

Sediment removal is allowable only to maintain function of existing facilities and structures, or as necessary to maintain or restore the geomorphic integrity of the upper Yellowstone River. Diversion or removal of sediment or alluvium from the river channel and adjacent wetlands for other purposes is not allowed in the Special River Management Zone (SRMZ) under a Nationwide Permit. Examples of sediment diversion or removal not allowed under a Nationwide Permit include hydraulic dredging and mining and mechanical excavation to obtain aggregate, fill material, or minerals, including gold. Processing of material for the purpose of obtaining select minerals or a specific gradation of material, where only a portion of the sediment or alluvium is removed and the remainder returned to the SRMZ, is not allowed under a Nationwide Permit in the SRMZ.

**Special River Management Zone of the Upper Yellowstone River – Dams – All Nationwide Permits**

New dams, diversions, and/or impoundments are not authorized under a Nationwide Permit in the Special River Management Zone. These projects typically have more than minimal adverse impacts and must be reviewed under standard (individual) permit procedures.

**Special River Management Zone of the Upper Yellowstone River - Constructed Ponds and Stream Channels – All Nationwide Permits**

Construction of ponds and new artificial stream channels is prohibited under a Nationwide Permit in the Special River Management Zone, unless they are necessary and appropriate elements of a stream or wetland restoration project.

**Special River Management Zone of the Upper Yellowstone River - Placement and Removal of Temporary Fills – All Nationwide Permits**

Temporary fills in waters of the United States must be placed on a horizontal marker layer such as fabric or certified weed-free straw to delineate the pre-project ground elevation and facilitate complete fill removal and site restoration.

**Borrow Site Identification – All Nationwide Permits**

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

**Temporary Vegetation Impacts – All Nationwide Permits**

Limit clearing of riparian or wetland vegetation to the absolute minimum necessary. Where temporary riparian or wetland vegetation impacts are unavoidable, mow or cut off the vegetation above the ground, leaving the topsoil and root mass intact. Restore disturbed areas to original or pre-construction contours and use seeding and planting as necessary to re-establish desirable vegetative cover, utilizing native species in areas where native species were impacted.



**Erosion and Sediment Control Blanket – All Nationwide Permits**

All erosion control blanket or fabric used in or adjacent to waters of the U.S. must be comprised of degradable material to ensure decomposition. Do not use material that includes stabilized netting or stabilized open mesh, as those products take a long time to degrade and they can trap small animals, birds, amphibians and fish. This prohibition also applies to mesh materials used for wattles, rolled materials, and bank wraps. Erosion control blanket or fabrics that break down within 24 months are acceptable. Non-degradable blankets or fabric may be allowed on a case-specific basis if it will be buried beneath riprap or structures and it is not likely to be exposed. Non-degradable blanket or fabric that becomes exposed within waters of the U.S. must be removed.

**Counter-Sinking Riprap Associated with Culvert Installation – All Nationwide Permits**

When riprap inlet and outlet protection is used below the ordinary high water mark, it must be placed to match the adjacent culvert bottom elevations. Where culvert bottom elevations are lower than the stream bed elevation, the riprap must be lower than the stream bed and match the culvert elevation.

**Minimum Culvert Size – All Nationwide Permits**

Culverts installed in ephemeral, intermittent, and perennial streams must completely span the bankfull width of the stream channel. This requirement can be waived by the Corps for culverts installed in man-made ditches or canals. For the purpose of this condition bankfull width is defined as the width of the channel at the elevation where overbank or out-of-bank flow begins.

**REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS**

**Nationwide Permit 7 – Outfall Structures and Associated Intake Structures and**  
**Nationwide Permit 12 – Utility Line Activities - Intakes in the Yellowstone River or the Missouri River in**  
**Blaine, Chouteau, Custer, Dawson, Fergus, Garfield, McCone, Petroleum, Phillips, Prairie, Richland, Roosevelt,**  
**Valley and Wibaux Counties.** Inlet screens will be installed on all pump intakes, with a screen mesh opening size no larger than 0.25 inches. Water intake velocities must not to exceed 0.5 feet per second through the mesh. Intakes must be located in the deepest water available and be elevated off the bottom of the river bed.

**Nationwide Permit 11 – Temporary Recreational Structures.** Temporary recreational structures within the Special River Management Zone of the upper Yellowstone River can be installed no earlier than 7 calendar days in advance of an event and must be removed no later than 7 calendar days after the event concludes.

**Nationwide Permit 12 – Utility Line Activities.** Trench excavation and backfill for utility lines is prohibited within the Ordinary High Water Mark of main and secondary flow channels and in adjacent wetlands within the Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 12 - Utility Line Activities.** Permittees must notify the Corps in accordance with General Condition No. 31 (Pre-Construction Notification) prior to initiating any utility line activity that involves the discharge of dredged or fill material into open water such as lakes, ponds and perennial streams, or into wetlands, intermittent streams, or ephemeral streams when surface water is present.

The following activities normally do not usually involve a discharge of dredged or fill material and do not normally require a Section 404 permit:

1) Utility line activities involving only directional drilling or boring under the waterway where the bed and banks of the waterway and wetlands are not disturbed;

2) Utility line suspension over the waterway where wetlands and the bed and banks of the waterway are not disturbed;

3) Plowing or knifing methods of utility line installation where the soil or substrate is briefly separated and the utility line placed in the crease before the soil falls back into place; and

4) Permits are required for all of the above activities (1 through 3) in waters regulated under Section 10 of the Rivers and Harbors Act.

**Nationwide Permit 13 – Bank Stabilization – Special River Management Zone of the Upper Yellowstone River**

- a. Temporary bank stabilization is prohibited during spring runoff.
- b. Construction of temporary or permanent levees is prohibited within the Special River Management Zone.
- c. Only bank stabilization that is parallel to and adjacent to the valley wall and/or Special River Management Zone boundary is allowed. All other bank stabilization must be reviewed under Standard Permit procedures. Bank stabilization along roads, ditches, fills, or structures already located along the valley wall is allowed under this Nationwide Permit.

**Nationwide Permit 14 – Linear Transportation Projects.** The construction of new transportation facilities in waters of the U.S. within the Special River Management Zone (SRMZ) of the upper Yellowstone River is prohibited under this Nationwide Permit and must be reviewed under Standard Permit procedures. The replacement, reconstruction, and upgrading of existing transportation facilities are allowed under this Nationwide Permit within the SRMZ.

**Nationwide Permit 17 – Hydropower Projects.** This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 21 – Surface Coal Mining Activities.** This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 23 – Approved Categorical Exclusions.** All permittees must notify the Corps in accordance with the General Condition No. 31 (Pre-Construction Notification) prior to initiating any activities authorized under this permit.

**Nationwide Permit 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities.** The construction of water control structures, dikes, berms, current deflectors, bank stabilization, and ponds is prohibited within the Channel Migration Zone of the upper Yellowstone River unless it is demonstrated that the proposed features contribute to the restoration or rehabilitation of previously lost or impaired functions of the upper Yellowstone River and adjacent aquatic areas.

**Nationwide Permit 27 - Aquatic Habitat Restoration, Establishment, and Enhancement Activities.** All permittees must notify the Corps in accordance with the General Condition No. 31 (Pre-Construction Notification) prior to initiating any aquatic habitat restoration, establishment or enhancement activities.

Notifications for pond projects must demonstrate there will be no net loss of emergent wetlands (if present) once the pond site matures in order for the project to qualify for NWP 27. Monitoring will be required to assure no net loss of emergent wetlands.

NWP 27 will not be used to authorize berms, dams, or similar structures for on-stream ponds on perennial, intermittent, or ephemeral streams unless they are necessary and appropriate elements of a stream or wetland restoration project.

Post-construction monitoring is required for wetland restoration, establishment, and enhancement projects exceeding ½ acre in size, and for stream restoration, establishment, and enhancement projects exceeding 500 feet in length.

**Nationwide Permit 29 - Residential Developments.** This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 30 – Moist Soil Management for Wildlife.** Fire breaks within the Channel Migration Zone of the upper Yellowstone River must be reclaimed and restored within six months after the fire event ends.

**Nationwide Permit 33 – Temporary Construction, Access, and Dewatering.**

a. Temporary bank stabilization is prohibited during spring runoff within the Special River Management Zone of the upper Yellowstone River.

b. Construction of temporary levees is prohibited within the Special River Management Zone.

**Nationwide Permit 39 - Commercial and Institutional Developments**

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 40 – Agricultural Activities.** Only those activities associated with the reduction of existing adverse impacts on the upper Yellowstone River are authorized by this Nationwide Permit. Examples of allowable projects include work associated with livestock management, moving livestock watering areas off the river or out of the Channel Migration Zone, removal of irrigation systems from the Channel Migration Zone, and the removal or conversion of irrigation systems from flood irrigation to sprinkler irrigation.

**Nationwide Permit 42 - Recreational Facilities.** This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 43 - Stormwater Management Facilities.** This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 44 - Mining Activities.** This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 45 - Repair of Uplands Damaged by Discrete Events.** This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 49 – Coal Remining Activities.** This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 50 – Underground Coal Mining Activities.** This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

## **GENERAL CONDITIONS (REGIONAL ADDITIONS)**

### **General Condition 6 – Suitable Material**

The use of precast or cast in place concrete materials or structures for permanent stream bank or shoreline stabilization, or as a component of a stream channelization or relocation project, is prohibited in Montana. Articulated concrete matting or similar material may be used on a case-specific basis such as for boat ramps, bridge pier scour protection, low water fords, culvert aprons, etc.

The use of clean brick, broken concrete and cinder block (in lieu of rock riprap) for fill can be considered on a case-specific basis. A list of materials prohibited or restricted as fill material in waters of the United States within Montana can be found at <http://www.nwo.usace.army.mil/html/od-rmt/mtspecific.html>.

## **DEFINITIONS**

“Discrete Event,” as used in Nationwide Permit 3 – Maintenance and Nationwide Permit 45 – Repair of Uplands Damaged by Discrete Events does not include runoff or stream flow events equal to or less than the bankfull discharge.